



Senate Government Operations Committee
Chair Donna Mercado Kim, Vice Chair Russell Ruderman

03/16/2017 at 2:50 PM in Room 224
HB165 HD1 – Relating to Public Meetings

TESTIMONY — COMMENTS
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Kim, Vice Chair Ruderman, and members of the committee:

Common Cause Hawaii offers comments on HB165 HD1 which would establish a working group to develop solutions to the potential administrative burden of public disclosure of board packets prior to the meeting. It also requires the electronic posting of meeting notices and establishes requirements for emergency meetings.

We believe that an educated, engaged citizenry is crucial to a thriving democracy, and making board packets available to the public prior to a board meeting is key to fostering greater public dialog between policy makers and the public on pressing issues that affect Hawaii.

Thus we encourage you to reinsert the original language of HB165. We also encourage you to consider amending the language to exempt licensing applications and extend implementation through December 2016, as this will address agencies' concerns expressed via testimony at previous hearings. We believe that these changes would eliminate the need for a working group and increase public engagement.

Thank you for the opportunity to offer **comments on HB165 HD1**.

THE CIVIL BEAT
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Senate Committee on Government Operations
Honorable Donna Mercado Kim, Chair
Honorable Russell E. Ruderman, Vice Chair



RE: Testimony Commenting on H.B. 165 H.D. 1, Relating to Public Meetings
Hearing: March 16, 2017 at 2:50 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **strongly supporting the intent of H.B. 165 H.D. 1, but opposing Section 1 of the bill as amended.** Section 1 of the original bill should be reinstated.

H.B. 165 does many positive things to bring our open meetings law into the 21st Century. But the proposed working group concerning board packets is unnecessary.

To address the concerns that have been raised in testimony from the DCCA Professional and Vocational Licensing Division and the county liquor commissions, the Law Center proposes amending the definition of "board packet" from the original version of Section 1 in H.B. 165 (amendment underlined):

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting; provided that this section shall not require public access to license applications or information protected from disclosure under chapter 92F.

This amendment will eliminate the purported redaction concerns for board packets at DCCA and the liquor commissions. The Law Center would suggest a December 2018 implementation date for the board packet requirement to the extent that boards need to adjust procedures and prepare. But this Committee and the Legislature should ***firmly commit to providing board packets to the public***, rather than studying an issue that has been discussed for three years already.

Our society cannot expect the public to participate and testify at Sunshine board meetings, unless the board educates the public – as it does its board members – concerning the matters that will be discussed at open meetings. Requiring public access to board packets before the meeting is essential. For three years, the Legislature has

been refining the issue, and the proposed standard in H.B. 165 and S.B. 312 strongly accommodates board concerns about the purported burden of sharing board packets.

Although the Law Center offers a proposal to address DCCA's concerns, it is worth noting that the agency's concerns are not well-founded.

1. **Costs.** DCCA states that it will incur a major fiscal burden to disseminate board packets under H.B. 165 (before amendment). That bill did not require dissemination; it only required access in the board's office. Members of the public could come into the office, inspect the packet, and incur the expense of making a copy at a publicly accessible copier if they so choose.¹ The boards *were not required to disseminate board packets* to the hundreds of people that receive notice of meetings.
2. **Privacy Concerns.** DCCA claims that "[m]ost of the information contained in board packets is confidential." *As reflected in the long list of boards below that already make board packets publicly available, that simply is not true.* DCCA may be thinking of its license applications, but, even before the Law Center's proposed amendment here, those records were exempt from public access under the board packets provision. H.B. 165 (before amendment) did not require public access to information protected by Chapter 92F. Before DCCA boards grant a license, OIP has long held that the license application is confidential. OIP Op. No. 91-01 at 1-2 ("When the DCCA has not yet issued or has denied issuance of a license to an applicant, the license application is confidential under the UIPA exception for government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy."). Thus, the Law Center's proposed amendment only codifies existing law concerning DCCA's license applications.
3. **Access at Time of Agenda Notice.** DCCA states that the board packets provision requires access to board packets when the agenda is sent out six days before a meeting and failure to do so will lead to overturning board actions. H.B. 165 (before amendment) required public access when the packets were shared with the board members – not at the time of the agenda notice. And the board packet requirements were *not* included in HRS §§ 92-3 or 92-7; so violations of the board packet provision would not void board actions, HRS § 92-11 (voiding final action is a remedy only for violations of 92-3 and 92-7).

DCCA's erroneous claims should not permit another year of delay. The Law Center's proposed amendment addresses its concerns.

¹ HRS § 92F-11(d) provides that government agencies must "assure reasonable access to facilities for duplicating records and for making memoranda or abstracts."

For the Committee's information, below is a list of Sunshine boards that, based on the board's Internet site or agenda notices, the Law Center identified *in a cursory search* as providing public access to board packets in advance of a meeting.

State Boards & Commissions

- Hawai'i State Ethics Commission
- Hawaiian Homes Commission
- Hawai'i Community Development Authority
- University of Hawai'i Board of Regents
- Board of Agriculture
- Agribusiness Development Corporation
- Board of Education
- Hawai'i Teacher Standards Board
- Board of Land and Natural Resources
- Island Burial Councils
- Commission on Water Resource Management
- Council on Revenues
- Tax Review Commission
- Board of Directors of the Hawai'i Public Housing Authority
- Procurement Policy Board
- Access Hawai'i Committee
- Hawai'i Interagency Council for Transit-Oriented Development
- Small Business Regulatory Review Board
- Advisory Commission on Drug Abuse and Controlled Substances

County Boards & Commissions

- City Council
- Maui County Council
- Kaua'i County Council
- Hawai'i County Council
- Honolulu Authority for Rapid Transportation
- County of Hawai'i, Planning Department, Planning Commissions
- County of Hawai'i, Planning Department, Board of Appeals
- County of Kaua'i Board of Ethics
- County of Kaua'i Board of Review (Real Property Tax Appeals)
- County of Kaua'i Charter Review Commission
- County of Kaua'i Civil Service Commission
- County of Kaua'i Committee on the Status of Women
- County of Kaua'i Cost Control Commission
- County of Kaua'i Fire Commission
- County of Kaua'i Historic Preservation Commission
- County of Maui Board of Variances and Appeals

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- County of Maui Civil Service Commission
- County of Maui Commission on the Status of Women
- County of Maui Cost of Government Commission
- City Ethics Commission

Thank you again for the opportunity to testify.



DISABILITY AND COMMUNICATION ACCESS BOARD

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LATE

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TESTIMONY TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

House Bill 165, HD1 – Relating to Public Meetings

The Disability and Communication Access Board (DCAB) is a statewide Governor-appointed Board with a majority of its members being persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB takes no position but provides comment on House Bill 165, HD1 Relating to Public Meetings which establishes a working group to develop solutions to the potential administrative burden of public disclosure of the board packet prior to the meeting. The working group shall report to the Legislature before the 2018 Regular Session. It also requires, among other things, electronic posting of meeting notices, cancellation notices, and meeting minutes, and establishes notice and disclosure requirements for emergency meetings.

Our concerns focus on the information provided to the public, whether it is related to the board packets or the electronic posting of meeting notices, cancellations, or emergency meetings. Each option offered is required to be provided in alternate formats so that everyone requesting the information can have it in a format that is accessible to him or her. Requests for material in alternate format (Braille, large print, electronic, etc.) should be factored into how the information is disseminated to the public. Print format is not the only way to provide information, and agency staff needs to be educated that if asked for another format they will be aware to provide such information. This issue should also be included on the list of items related to board packet considerations that begins on page 18 and continues through page 3, line 16.

Also on page 7, line 6 (e) it discusses information sent in an email. Information sent electronically also needs to be sent in an accessible format. If the print material in the board packet is scanned and emailed as a pdf document, it will not be accessible to someone who is blind or uses a screenreader such as JAWS on his or her computer. Similar considerations need to be made if the agency posts notices on websites. All information posted on websites must be accessible. Please take these concerns into consideration in the working group to create access for everyone.

Thank you for the opportunity to testify.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG
Chairperson
Legislative Committee

FRANCINE WAI
Executive Director